1 2 3 4 5	MARY ANN SMITH Deputy Commissioner SEAN ROONEY Assistant Chief Counsel BLAINE A. NOBLETT (State Bar No. 235612) Senior Counsel Department of Business Oversight 320 West 4th Street, Suite 750				
6	Los Angeles, California 90013-2344 Telephone: (213) 576-1396 Facsimile: (213) 576-7181				
7 8	Attorneys for Complainant				
9	BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT				
10	OF THE STATE OF CALIFORNIA				
11					
12	In the Matter of:	) OAH CASE NO.: 2019110758			
13	THE COMMISSIONER OF BUSINESS OVERSIGHT,	) CRMLA LICENSE NO.: 41DBO-40950 ) CFL LICENSE NO.: 603-H883			
14	Complainant,	) SETTLEMENT AGREEMENT			
16	v.	) Hearing Dates: April 1 – 3, 2020			
17		<ul><li>Hearing Time: 9:00 a.m.</li><li>Location: 320 W. 4th Street, 6th Floor, Suite 630</li></ul>			
18	WYNDHAM CAPITAL MORTGAGE, INC.,	) Los Angeles, California 90013-2344 ) ALJ: Unassigned			
19	Respondent.	) ALJ. Ollassiglica			
20		) _)			
21	The Commissioner of Business Oversight (Commissioner) and Wyndham Capital Mortgage,				
22	Inc. (Wyndham), (collectively, the Parties), enter into this Settlement Agreement (the Settlement				
23	Agreement) with respect to the following facts:				
24	I.				
25	Recitals				
26	A. The Commissioner has jurisdiction over the licensing and regulation of persons and				
27	entities engaged in the business of lending and servicing residential mortgages under the California				
28	The second control of				
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Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.). The Commissioner is
authorized to administer the CRMLA and the rules and regulations promulgated in title 10 of the
California Code of Regulations (CCR).

- B. Financial Code section 22000 et seq. authorizes the Commissioner to administer and enforce the provisions of the California Financing Law (CFL) and the rules and regulations promulgated in the CCR that regulate the business and activities of finance lenders and brokers.
- C. Wyndham is a residential mortgage lender licensed by the Commissioner under the CRMLA, license number 41DBO-40950. Wyndham employs or employed mortgage loan originators under its CRMLA license.
- D. Wyndham holds a finance lender and broker license under the CFL, license number 603-H883. Wyndham employs mortgage loan originators under its CFL license.
- E. Wyndham has its principal place of business located at 6115 Park South Drive, Suite 200, Charlotte, North Carolina.
- F. Jeff Douglas is Wyndham's CEO and, as such, authorized to enter this Settlement Agreement on Wyndham's behalf.
- G. Wyndham sought to surrender to the Commissioner its CRMLA license on May 14, 2019. But before the Commissioner may accept a licensee's surrender under the CRMLA, the licensee must satisfy the requirements of section 50123 of the Financial Code, which requires it submit a plan of surrender. Wyndham has yet to file its plan of surrender with the Commissioner and the Commissioner has not accepted the surrender of Wyndham's residential mortgage lender's license under the CRMLA.
- H. On October 15, 2019, the Commissioner issued Wyndham an Accusation (Accusation) to suspend the company's CRMLA and CFL licenses and impose penalties as a result of violations identified during the Commissioner's March 5, 2019 examination (the Examination Findings), as follows:
- Failing to submit background and fingerprint checks for its officers under its CRMLA license in violation of Financial Code section 50121 and CCR sections 1950.122.2 and 1950.122.4.

- ii. Failing to submit background and fingerprint checks for its officers under its CFL license in violation of Financial Code section 22105 and CCR section 1409.
- iii. Failing to disclose its license number in the written disclosures it provided to borrowers in violation of 22337, subdivision (a).
- iv. Providing borrowers with deficient Fair Lending Notices in violation of Health and Safety Code section 35830 and title 21 CCR section 7114.
- I. On October 29, 2019, Wyndham requested an administrative hearing to contest the Accusation. The matter was set before the Office of Administrative Hearings and the three-day hearing is scheduled to commence in Los Angeles on April 1, 2020.
- J. Wyndham neither admits nor denies the allegations contained in the Accusation. NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth herein, the Parties agree as follows:

## II.

## **Terms and Conditions**

- 1. <u>Purpose</u>. The Settlement Agreement resolves the issues before the Commissioner described above in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is consistent with the purposes and provisions of the CRMLA and CFL.
- 2. <u>Acknowledgment</u>. Wyndham acknowledges that the Commissioner issued the Accusation, in which the Commissioner found Wyndham had violated certain provisions of the CRMLA and CFL as described above in the Examination Findings. Wyndham admits service of the Accusation filed in this matter.
- 3. <u>Desist and Refrain Order</u>. Under Financial Code section 22712, subdivision (a), Wyndham stipulates that it is ordered to desist and refrain from violating Financial Code sections 22105, 22337, Health and Safety Code section 35830, CCR section 1409, and 21 CCR section 7114 (the Order). Wyndham agrees that the Order is a final order.
- 4. <u>Fingerprint Deficiency Forms</u>. Under Financial Code sections 22105 and 50121 and CCR sections 1409, 1950.122.2 and 1950.122.4, Wyndham agrees to submit fingerprint deficiency

forms for all principal officers employed by the company under its CRMLA and CFL licenses within 30 days from the effective date of the Settlement Agreement to the extent fingerprint forms have not already been submitted for these persons.

5. <u>Penalties</u>. Wyndham shall pay penalties in the amount of \$15,000.00 to resolve the Examination Findings set forth in the Recitals above (the Penalty Payment). The Penalty Payment shall be made within two business days of the effective date of the Settlement Agreement. The Penalty Payment shall be made payable in the form of a cashier's check or Automated Clearing House deposit to the Department of Business Oversight (Department). If by cashier's check, send to:

Accounting-Litigation
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, California 95814

Notice of the Penalty Payment shall be made via e-mail to Blaine A. Noblett, Senior Counsel at Department of Business Oversight, blaine.noblett@dbo.ca.gov.

- 6. <u>Surrender of CRMLA License</u>. The Commissioner agrees that Wyndham shall have 60 days within which to surrender its residential mortgage lender's license to the Department in accordance with Financial Code section 50123, subdivision (b), which includes the filing of a plan for withdrawal (Plan of Surrender) that includes a timetable for the disposition of the business and a closing audit, review, or other agreed upon procedures performed by an independent certified public accountant, as set forth in the NMLS surrender checklist entitled "CA-DBO Residential Mortgage Lending Act License Surrender Checklist" (the 60-day Surrender Period). The Commissioner shall not deem the license surrendered until the Department notifies Wyndham that its Plan of Surrender is acceptable. The 60-day Surrender Period shall commence on the effective date of the Settlement Agreement.
- 7. Revocation of Wyndham's CRMLA License. Wyndham agrees that if it fails to submit fingerprint deficiency forms as required by paragraph 4., above; fails to make the Penalty Payment as required by paragraph 5., above; or fails to surrender its residential mortgage lender's license to the Commissioner within the 60-day Surrender Period as required by paragraph 6., above, the Commissioner shall automatically revoke Wyndham's residential mortgage lender's license and

any rights to a hearing regarding the license revocation and to any reconsideration, appeal, or other
rights which may be afforded under the CRMLA, the Administrative Procedure Act (APA) (Gov.
Code, § 11340 et seq.), the Code of Civil Procedure (CCP) (Code Civ. Proc., § 1 et seq.), or any
other provision of law in connection therewith are expressly waived, provided that the
Commissioner give Wyndham 10 days' notice of the failure to satisfy the conditions set forth above
and an opportunity to cure. Wyndham further expressly waives any requirement for the filing of an
accusation under Government Code section 11415.60, subdivision (b), in connection with the
Commissioner's revocation of its residential mortgage lender's license under this provision.

- 8. <u>Waiver of Hearing Rights</u>. Wyndham agrees that the Settlement Agreement shall have the effect of withdrawing its request for an administrative hearing on the Accusation. Wyndham acknowledges its right to an administrative hearing under the CRMLA and CFL in connection with the Accusation and Order and hereby waives its right to a hearing and to any reconsideration, appeal, or other rights which may be afforded it under the CRMLA, CFL, APA, CCP, or any other provision of law in connection with this matter.
- 9. <u>Processing of Surrender</u>. The Commissioner agrees to process Wyndham's Plan of Surrender filed with the Commissioner in an expeditious manner, which shall include prompt notice to Wyndham of any deficiency in the completeness of the Plan of Surrender.
- 10. <u>Dismissal of the Accusation</u>. Except as provided in the Settlement Agreement, Wyndham agrees that the Settlement Agreement shall have the effect of dismissing that portion of the Accusation relating to the suspension of Wyndham's CRMLA license. The dismissal shall become effective upon the Commissioner's acceptance of the Plan of Surrender as described in paragraph 6., above.
- 11. <u>Full and Final Settlement</u>. The Parties hereby acknowledge and agree that the Settlement Agreement is intended to constitute a full, final, and complete resolution of the Accusation and that no further proceedings or actions will be brought by the Commissioner in connection with the Accusation, either under the CRMLA or CFL or any other provision of law, excepting any proceeding to enforce compliance with the terms of the Settlement Agreement.
  - 12. Information Willfully Withheld. The Settlement Agreement may be revoked, and the

Commissioner may pursue any and all remedies under the CRMLA or CFL against Wyndham if the Commissioner discovers Wyndham knowingly or willfully withheld information used for and relied upon in the Settlement Agreement.

- 13. <u>Future Actions by Commissioner</u>. If Wyndham fails to comply with any term of the Settlement Agreement, the Commissioner may institute proceedings for any and all violations otherwise resolved under the Settlement Agreement. The Commissioner reserves the right to bring any future actions against Wyndham, or any of its partners, owners, officers, shareholders, directors, employees, or successors for any and all unknown violations of the CRMLA or CFL.
- 14. <u>Assisting Other Agencies</u>. The Parties further acknowledge and agree that nothing in the Settlement Agreement shall limit the Commissioner's ability to assist any other agency (city, county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any such agency against Wyndham or any other person based upon any of the activities alleged in this matter or otherwise.
- 15. <u>Binding</u>. The Settlement Agreement is binding on all heirs, assigns, or successors in interest.
- 16. <u>Independent Legal Advice</u>. Each of the Parties represents, warrants, and agrees that they have received independent advice from their attorney(s) or representative(s) with respect to the advisability of executing the Settlement Agreement.
- 17. <u>Counterparts</u>. The Parties agree that the Settlement Agreement may be executed in one or more separate counterparts, each of which shall be deemed an original when so executed. Such counterparts shall together constitute and be one and the same instrument.
- 18. <u>Waiver, Modification, and Qualified Integration</u>. The waiver of any provision of the Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver, amendment, or modification of the Settlement Agreement shall be valid or binding to any extent unless it is in writing and signed by all the Parties affected by it.
- 19. <u>Headings and Governing Law</u>. The headings to the paragraphs of the Settlement Agreement are inserted for convenience only and will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof. The Settlement Agreement shall be construed

and enforced in accordance with and governed by California law.

- 20. <u>Full Integration</u>. Each of the Parties represents, warrants, and agrees that in executing the Settlement Agreement they have relied solely on the statements set forth herein and the advice of their own counsel. Each of the Parties further represents, warrants, and agrees that in executing the Settlement Agreement they have placed no reliance on any statement, representation, or promise of any other party, or any other person or entity not expressly set forth herein, or upon the failure of any party or any other person or entity to make any statement, representation, or disclosure of anything whatsoever. The Parties have included this clause (1) to preclude any claim that any party was in any way fraudulently induced to execute the Settlement Agreement and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of the Settlement Agreement.
- No Presumption Against Drafting Party. In that the Parties have had the opportunity to draft, review, and edit the language of the Settlement Agreement, no presumption for or against any party arising out of drafting all or any part of the Settlement Agreement will be applied in any action relating to, connected to, or involving the Settlement Agreement. Accordingly, the Parties waive the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the party that caused the uncertainty to exist.
- 22. <u>Effect Upon Future Proceedings</u>. If Wyndham applied for any license, permit, or qualification under the Commissioner's current or future jurisdiction, or is the subject of any future action by the Commissioner to enforce the Settlement Agreement, then the subject matter hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).
- 23. <u>Voluntary Agreement</u>. Wyndham enters into the Settlement Agreement voluntarily and without coercion and acknowledges that no promises, threats, or assurances have been made by the Commissioner, or any officer or agent thereof, about the Settlement Agreement.
- 24. <u>Effective Date</u>. The Settlement Agreement shall become final and effective once signed by all parties and delivered by the Commissioner's agent via e-mail to Wyndham's counsel at kider@thewbkfirm.com (the Effective Date).

1	25. <u>Notice</u> . Any notices required under the Settlement Agreement shall be provided to		
2	each party at the following addresses:		
3	If to Wyndhan	n:	Jeff Douglas, CEO
4			Wyndham Capital Mortgage, Inc. 6115 Park South, Suite 200
5			Charlotte, North Carolina 28210
6	With copy to:		Mitchel H. Kider, Esq.
7			Weiner Brodsky Kider PC 1300 19th Street NW 5th Floor
8			Washington D.C. 20036
9	If to the Commissioner:		Blaine A. Noblett, Senior Counsel
10			Department of Business Oversight 320 West 4th Street, Suite 750
11			Los Angeles, California 90013-2344
12	26. <u>Public Record</u> . Wyndham acknowledges that the Settlement Agreement is a public		
13	record.		
14	27. <u>Authority to Execute</u> . Each signatory hereto covenants that he/she possesses all		
15	necessary capacity and authority to sign and enter into the Settlement Agreement.		
16	[signature page follows]		
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1	IN WITNESS WHEREOF, the Parties hereto have approved and executed the Settlement		
2	Agreement on the dates set forth opposite their respective signatures.		
3		MANUEL P. ALVAREZ	
4		Commissioner of Business Oversight	
5			
6	Dated: <u>2/28/20</u>	By MARY ANN SMITH	
7		Deputy Commissioner	
8		Enforcement Division	
9		WYNDHAM MORTGAGE, INC.	
10			
11	Dated: <u>2/26/20</u>	By	
12		JEFF DOUGLAS, CEO On behalf of Wyndham Mortgage, Inc.	
13		<b>,</b>	
14	Approved as to Form:		
15	By		
16	Mitchel H. Kider, Esq.	_	
17	Weiner Brodsky Kider PC Attorneys on behalf of Wyndham Mo	ortgage, Inc.	
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